

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

UNITED STATES OF AMERICA

v.

CRIMINAL NOS. 1:10-00185-01
1:10-00186-01

PAUL TEVIS WINEBUSH

MEMORANDUM OPINION AND ORDER

Pending before the court are defendant's motions, pursuant to 18 U.S.C. § 3582(c)(2), for a reduction in his sentence based on a subsequent reduction in the applicable sentencing guideline. (Docs. No. 415 and 419). On April 30, 2014, the United States Sentencing Commission submitted to Congress an amendment to the federal sentencing guidelines that reduces the guidelines applicable to drug trafficking offenses. Specifically, Amendment 782 reduces by two the offense levels assigned in the Drug Quantity Table, resulting in lower guideline ranges for most drug trafficking offenses. Amendment 782, sometimes called "drugs minus two" or the "2014 drug guidelines amendment," took effect on November 1, 2014. On July 18, 2014, the Sentencing Commission voted to give retroactive effect to Amendment 782. Amendment 782 is however subject to the following limitation: "The court shall not order a reduced term of imprisonment based on Amendment 782 unless the effective date of the court's order is November 1, 2015, or later." U.S.S.G. § 1B1.10(e)(1).

The court has received and considered the Original Presentence Investigation Report (PSI), the Judgment and Commitment Orders and Statement of Reasons, addendum to the PSI from the Probation Office, memoranda filed by defendant and the United States, and other matters of record. The court has also considered the applicable factors under 18 U.S.C. § 3553(a), consistent with § 3582(c)(2), and public safety.

Having reviewed the materials of record, the court has determined that defendant's motions must be **DENIED**. As defendant concedes, although he received a variance sentence, he was sentenced as a career offender. Accordingly, the guideline range applicable to defendant has not been lowered as a result of the amendment.

The Clerk is **DIRECTED** to send a copy of this Memorandum Opinion and Order to defendant, counsel of record, the United States Probation Office, and the United States Marshal for the Southern District of West Virginia.

IT IS SO ORDERED this 10th day of June, 2016.

ENTER:

A handwritten signature in dark ink, appearing to read "David A. Faber", is written over a horizontal line.

David A. Faber

Senior United States District Judge